

**EXCERPT OF SEPA  
SECTIONS (INCLUDING  
VETO MESSAGE)**

CERTIFICATION OF ENROLLMENT

**SECOND ENGROSSED SUBSTITUTE SENATE BILL 6406**

Chapter 1, Laws of 2012

(partial veto)

62nd Legislature  
2012 1st Special Session

NATURAL RESOURCE MANAGEMENT

EFFECTIVE DATE: 07/10/12

Passed by the Senate April 10, 2012  
YEAS 34 NAYS 13

BRAD OWEN

**President of the Senate**

Passed by the House April 10, 2012  
YEAS 75 NAYS 23

FRANK CHOPP

**Speaker of the House of Representatives**

CERTIFICATE

I, Thomas Hoemann, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SECOND ENGROSSED SUBSTITUTE SENATE BILL 6406** as passed by the Senate and the House of Representatives on the dates hereon set forth.

THOMAS HOEMANN

**Secretary**

Approved May 2, 2012, 1:36 p.m., with the exception of Sections 305 and 306 which are vetoed.

1FILED

May 2, 2012

CHRISTINE GREGOIRE

**Governor of the State of Washington**

**Secretary of State  
State of Washington**

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SECOND ENGROSSED SUBSTITUTE SENATE BILL 6406

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AS AMENDED BY THE HOUSE

Passed Legislature - 2012 1st Special Session

**State of Washington                      62nd Legislature                      2012 1st Special Session**

**By** Senate Energy, Natural Resources & Marine Waters (originally sponsored by Senators Hargrove, Hobbs, Delvin, Hatfield, Tom, Stevens, Regala, Morton, Ranker, and Shin)

READ FIRST TIME 02/03/12.

1            AN ACT Relating to modifying programs that provide for the  
2 protection of the state's natural resources; amending RCW 77.55.021,  
3 77.55.151, 77.55.231, 76.09.040, 76.09.050, 76.09.150, 76.09.065,  
4 76.09.470, 76.09.030, 43.21C.031, 43.21C.229, 82.02.020, 36.70A.490,  
5 36.70A.500, 43.21C.110, 43.21C.095, and 90.48.260; reenacting and  
6 amending RCW 77.55.011, 76.09.060, and 76.09.020; adding new sections  
7 to chapter 77.55 RCW; adding a new section to chapter 76.09 RCW; adding  
8 a new section to chapter 43.30 RCW; adding new sections to chapter  
9 43.21C RCW; creating new sections; prescribing penalties; providing a  
10 contingent effective date; and providing expiration dates.

11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

12            NEW SECTION. **Sec. 1.** The legislature finds that significant  
13 opportunities exist to modify programs that provide for management and  
14 protection of the state's natural resources, including the state's  
15 forests, fish, and wildlife, in order to streamline regulatory  
16 processes and achieve program efficiencies while at the same time  
17 increasing the sustainability of program funding and maintaining  
18 current levels of natural resource protection. The legislature intends  
19 to update provisions relating to natural resource management and  
1 regulatory programs including the hydraulic project approval program,  
2 forest practices act, and state environmental policy act, in order to  
3 achieve these opportunities.

**PART THREE**

**State Environmental Policy Act and Local Development Regulations**

NEW SECTION. **Sec. 301.** (1) The legislature recognizes that the rule-based categorical exemption thresholds to chapter 43.21C RCW, found in WAC 197-11-800, have not been updated in recent years, and should be reviewed in light of the increased environmental protections in place under chapters 36.70A and 90.58 RCW, and other laws. It is the intent of the legislature to direct the department of ecology to conduct two phases of rule making over the next two years to increase the thresholds for these categorical exemptions.

(2) By December 31, 2012, the department of ecology shall increase the rule-based categorical exemptions to chapter 43.21C RCW found in WAC 197-11-800 and update the environmental checklist found in WAC 197-11-960. In updating the categorical exemptions, the department of ecology must:

(a) At a minimum, increase the existing maximum threshold levels for the following project types:

(i) The construction or location of single-family residential developments;

(ii) The construction or location of multifamily residential developments;

(iii) The construction of an agricultural structure, other than a feed lot, that is similar to the following: A barn, a loafing shed, a farm equipment storage building, or a produce storing or packing structure;

(iv) The construction of the following, including any associated parking areas or facilities: An office, a school, a commercial building, a recreational building, a service building, or a storage building;

(v) Landfilling or excavation activities; and

(vi) The installation of an electric facility, lines, equipment, or appurtenances, other than substations.

(b) Establish maximum exemption levels for action types that differ based on whether the project is proposed to occur in:

(i) An incorporated city;

(ii) An unincorporated area within an urban growth area;

(iii) An unincorporated area outside of an urban growth area but within a county planning under chapter 36.70A RCW; or

1 (iv) An unincorporated area within a county not planning under  
2 chapter 36.70A RCW.

3 (c) In updating the environmental checklist found in WAC 197-11-  
4 960, the department of ecology shall:

5 (i) Improve efficiency of the environmental checklist; and

6 (ii) Not include any new subjects into the scope of the checklist,  
7 including climate change and greenhouse gases.

8 (d) Until the completion of the rule making required under this  
9 section, a city or county may apply the highest categorical exemption  
10 levels authorized under WAC 197-11-800 to any action, regardless if the  
11 city or county with jurisdiction has exercised its authority to raise  
12 the exemption levels above the established minimums, unless the city or  
13 county with jurisdiction passes an ordinance or resolution that lowers  
14 the exemption levels to a level below the allowed maximum but not less  
15 than the default minimum levels detailed in WAC 197-11-800.

16 (3) (a) By December 31, 2013, the department of ecology shall:

17 (i) Update, but not decrease, the thresholds for all other project  
18 actions not specified in subsection (2) of this section;

19 (ii) Propose methods for integrating the state environmental policy  
20 act process with provisions of the growth management act, chapter  
21 36.70A RCW, including consideration of ways to revise WAC 197-11-210  
22 through 197-11-232 to further the goals of RCW 43.21C.240; and

23 (iii) Create categorical exemptions for minor code amendments for  
24 which review under chapter 43.21C RCW would not be required because  
25 they do not lessen environmental protection.

26 (b) During this process, the department of ecology may also review  
27 and update the thresholds resulting from the 2012 rule-making process  
28 outlined in subsection (2) of this section.

29 (4) (a) The department of ecology shall convene an advisory  
30 committee consisting of members representing, at minimum, cities,  
31 counties, business interests, environmental interests, agricultural  
32 interests, cultural resources interests, state agencies, and tribal  
33 governments to:

34 (i) Assist in updating the environmental checklist and updating the  
35 thresholds for other project actions for both rule-making processes  
36 under subsections (2) and (3) of this section;

37 (ii) Ensure that state agencies and other interested parties can

1 receive notice about projects of interest through notice under chapter  
2 43.21C RCW and means other than chapter 43.21C RCW; and

3 (iii) Ensure that federally recognized tribes receive notice about  
4 projects that impact tribal interests through notice under chapter  
5 43.21C RCW and means other than chapter 43.21C RCW.

6 (b) Advisory committee members must have direct experience with the  
7 implementation or application of the state environmental policy act.

8 (5) This section expires July 31, 2014.

9 **Sec. 302.** RCW 43.21C.031 and 1995 c 347 s 203 are each amended to  
10 read as follows:

11 (1) An environmental impact statement (the detailed statement  
12 required by RCW 43.21C.030(2)(c)) shall be prepared on proposals for  
13 legislation and other major actions having a probable significant,  
14 adverse environmental impact. The environmental impact statement may  
15 be combined with the recommendation or report on the proposal or issued  
16 as a separate document. The substantive decisions or recommendations  
17 shall be clearly identifiable in the combined document. Actions  
18 categorically exempt under RCW 43.21C.110(1)(a) and section 307 of this  
19 act do not require environmental review or the preparation of an  
20 environmental impact statement under this chapter. ~~((In a county,~~  
21 ~~city, or town planning under RCW 36.70A.040, a planned action, as~~  
22 ~~provided for in subsection (2) of this section, does not require a~~  
23 ~~threshold determination or the preparation of an environmental impact~~  
24 ~~statement under this chapter, but is subject to environmental review~~  
25 ~~and mitigation as provided in this chapter.))~~

26 (2) An environmental impact statement is required to analyze only  
27 those probable adverse environmental impacts which are significant.  
28 Beneficial environmental impacts may be discussed. The responsible  
29 official shall consult with agencies and the public to identify such  
30 impacts and limit the scope of an environmental impact statement. The  
31 subjects listed in RCW 43.21C.030(2)(c) need not be treated as separate  
32 sections of an environmental impact statement. Discussions of  
33 significant short-term and long-term environmental impacts, significant  
34 irrevocable commitments of natural resources, significant alternatives  
35 including mitigation measures, and significant environmental impacts  
36 which cannot be mitigated should be consolidated or included, as

1 applicable, in those sections of an environmental impact statement  
2 where the responsible official decides they logically belong.

3 ~~((2)(a) For purposes of this section, a planned action means one  
4 or more types of project action that:~~

5 ~~(i) Are designated planned actions by an ordinance or resolution  
6 adopted by a county, city, or town planning under RCW 36.70A.040;~~

7 ~~(ii) Have had the significant impacts adequately addressed in an  
8 environmental impact statement prepared in conjunction with (A) a  
9 comprehensive plan or subarea plan adopted under chapter 36.70A RCW, or  
10 (B) a fully contained community, a master planned resort, a master  
11 planned development, or a phased project;~~

12 ~~(iii) Are subsequent or implementing projects for the proposals  
13 listed in (a)(ii) of this subsection;~~

14 ~~(iv) Are located within an urban growth area, as defined in RCW  
15 36.70A.030;~~

16 ~~(v) Are not essential public facilities, as defined in RCW  
17 36.70A.200; and~~

18 ~~(vi) Are consistent with a comprehensive plan adopted under chapter  
19 36.70A RCW.~~

20 ~~(b) A county, city, or town shall limit planned actions to certain  
21 types of development or to specific geographical areas that are less  
22 extensive than the jurisdictional boundaries of the county, city, or  
23 town and may limit a planned action to a time period identified in the  
24 environmental impact statement or the ordinance or resolution adopted  
25 under this subsection.))~~

26 NEW SECTION. Sec. 303. A new section is added to chapter 43.21C  
27 RCW to read as follows:

28 (1) For purposes of this chapter, a planned action means one or  
29 more types of development or redevelopment that meet the following  
30 criteria:

31 (a) Are designated as planned actions by an ordinance or resolution  
32 adopted by a county, city, or town planning under RCW 36.70A.040;

33 (b) Have had the significant impacts adequately addressed in an  
34 environmental impact statement under the requirements of this chapter  
35 in conjunction with, or to implement, a comprehensive plan or subarea  
36 plan adopted under chapter 36.70A RCW, or a fully contained community,

1 a master planned resort, a master planned development, or a phased  
2 project;

3 (c) Have had project level significant impacts adequately addressed  
4 in an environmental impact statement unless the impacts are  
5 specifically deferred for consideration at the project level pursuant  
6 to subsection (3) (b) of this section;

7 (d) Are subsequent or implementing projects for the proposals  
8 listed in (b) of this subsection;

9 (e) Are located within an urban growth area designated pursuant to  
10 RCW 36.70A.110;

11 (f) Are not essential public facilities, as defined in RCW  
12 36.70A.200, unless an essential public facility is accessory to or part  
13 of a residential, office, school, commercial, recreational, service, or  
14 industrial development that is designated a planned action under this  
15 subsection; and

16 (g) Are consistent with a comprehensive plan or subarea plan  
17 adopted under chapter 36.70A RCW.

18 (2) A county, city, or town shall define the types of development  
19 included in the planned action and may limit a planned action to:

20 (a) A specific geographic area that is less extensive than the  
21 jurisdictional boundaries of the county, city, or town; or

22 (b) A time period identified in the ordinance or resolution adopted  
23 under this subsection.

24 (3) (a) A county, city, or town shall determine during permit review  
25 whether a proposed project is consistent with a planned action  
26 ordinance adopted by the jurisdiction. To determine project  
27 consistency with a planned action ordinance, a county, city, or town  
28 may utilize a modified checklist pursuant to the rules adopted to  
29 implement RCW 43.21C.110, a form that is designated within the planned  
30 action ordinance, or a form contained in agency rules adopted pursuant  
31 to RCW 43.21C.120.

32 (b) A county, city, or town is not required to make a threshold  
33 determination and may not require additional environmental review, for  
34 a proposal that is determined to be consistent with the development or  
35 redevelopment described in the planned action ordinance, except for  
36 impacts that are specifically deferred to the project level at the time  
37 of the planned action ordinance's adoption. At least one community  
38 meeting must be held before the notice is issued for the planned action

1 ordinance. Notice for the planned action and notice of the community  
2 meeting required by this subsection (3)(b) must be mailed or otherwise  
3 verifiably provided to: (i) All affected federally recognized tribal  
4 governments; and (ii) agencies with jurisdiction over the future  
5 development anticipated for the planned action. The determination of  
6 consistency, and the adequacy of any environmental review that was  
7 specifically deferred, are subject to the type of administrative appeal  
8 that the county, city, or town provides for the proposal itself  
9 consistent with RCW 36.70B.060.

10 (4) For a planned action ordinance that encompasses the entire  
11 jurisdictional boundary of a county, city, or town, at least one  
12 community meeting must be held before the notice is issued for the  
13 planned action ordinance. Notice for the planned action ordinance and  
14 notice of the community meeting required by this subsection must be  
15 mailed or otherwise verifiably provided to:

- 16 (a) All property owners of record within the county, city, or town;  
17 (b) All affected federally recognized tribal governments; and  
18 (c) All agencies with jurisdiction over the future development  
19 anticipated for the planned action.

20 **Sec. 304.** RCW 43.21C.229 and 2003 c 298 s 1 are each amended to  
21 read as follows:

22 (1) In order to accommodate infill development and thereby realize  
23 the goals and policies of comprehensive plans adopted according to  
24 chapter 36.70A RCW, a city or county planning under RCW 36.70A.040 is  
25 authorized by this section to establish categorical exemptions from the  
26 requirements of this chapter. An exemption adopted under this section  
27 applies even if it differs from the categorical exemptions adopted by  
28 rule of the department under RCW 43.21C.110(1)(a). An exemption may be  
29 adopted by a city or county under this section if it meets the  
30 following criteria:

31 (a) It categorically exempts government action related to  
32 development ~~((that is new residential or mixed-use development))~~  
33 proposed to fill in an urban growth area, designated according to RCW  
34 36.70A.110, where current density and intensity of use in the area is  
35 lower than called for in the goals and policies of the applicable  
36 comprehensive plan and the development is either:

- 37 (i) Residential development;



1       (ii) Mixed-use development; or  
2       (iii) Commercial development up to sixty-five thousand square feet,  
3 excluding retail development;

4       (b) It does not exempt government action related to development  
5 that is inconsistent with the applicable comprehensive plan or would  
6 exceed the density or intensity of use called for in the goals and  
7 policies of the applicable comprehensive plan; ~~((and))~~

8       (c) The local government considers the specific probable adverse  
9 environmental impacts of the proposed action and determines that these  
10 specific impacts are adequately addressed by the development  
11 regulations or other applicable requirements of the comprehensive plan,  
12 subarea plan element of the comprehensive plan, planned action  
13 ordinance, or other local, state, or federal rules or laws; and

14       (d)(i) The city or county's applicable comprehensive plan was  
15 previously subjected to environmental analysis through an environmental  
16 impact statement under the requirements of this chapter prior to  
17 adoption; or

18       (ii) The city or county has prepared an environmental impact  
19 statement that considers the proposed use or density and intensity of  
20 use in the area proposed for an exemption under this section.

21       (2) Any categorical exemption adopted by a city or county under  
22 this section shall be subject to the rules of the department adopted  
23 according to RCW 43.21C.110(1)(a) that provide exceptions to the use of  
24 categorical exemptions adopted by the department.

25       **\*NEW SECTION.   Sec. 305.   \*Sec. 305 was vetoed. See message at end**  
26 ***Of chapter.***

33       ***\*Sec. 306.   \*Sec. 306 was vetoed. See message at end of chapter.***

1        NEW SECTION.    **Sec. 307.**    A new section is added to chapter 43.21C  
2    RCW to read as follows:

3        The following nonproject actions are categorically exempt from the  
4    requirements of this chapter:

5        (1) Amendments to development regulations that are required to  
6    ensure consistency with an adopted comprehensive plan pursuant to RCW  
7    36.70A.040, where the comprehensive plan was previously subjected to  
8    environmental review pursuant to this chapter and the impacts  
9    associated with the proposed regulation were specifically addressed in  
10   the prior environmental review;

11       (2) Amendments to development regulations that are required to  
12   ensure consistency with a shoreline master program approved pursuant to  
13   RCW 90.58.090, where the shoreline master program was previously  
14   subjected to environmental review pursuant to this chapter and the  
15   impacts associated with the proposed regulation were specifically  
16   addressed in the prior environmental review;

17       (3) Amendments to development regulations that, upon implementation  
18   of a project action, will provide increased environmental protection,  
19   limited to the following:

20       (a) Increased protections for critical areas, such as enhanced  
21   buffers or setbacks;

22       (b) Increased vegetation retention or decreased impervious surface  
23   areas in shoreline jurisdiction; and

24       (c) Increased vegetation retention or decreased impervious surface  
25   areas in critical areas;

26       (4) Amendments to technical codes adopted by a county, city, or  
27   town to ensure consistency with minimum standards contained in state  
28   law, including the following:

29       (a) Building codes required by chapter 19.27 RCW;

30       (b) Energy codes required by chapter 19.27A RCW; and

31       (c) Electrical codes required by chapter 19.28 RCW.

32       NEW SECTION.    **Sec. 308.**    A new section is added to chapter 43.21C  
33    RCW to read as follows:

34       (1) The lead agency for an environmental review under this chapter  
35    utilizing an environmental checklist developed by the department of  
36    ecology pursuant to RCW 43.21C.110 may identify within the checklist

1 provided to applicants instances where questions on the checklist are  
2 adequately covered by a locally adopted ordinance, development  
3 regulation, land use plan, or other legal authority.

4 (2) If a lead agency identifies an instance as described in  
5 subsection (1) of this section, it still must consider whether the  
6 action has an impact on the particular element or elements of the  
7 environment in question.

8 (3) In instances where the locally adopted ordinance, development  
9 regulation, land use plan, or other legal authority provide the  
10 necessary information to answer a specific question, the lead agency  
11 must explain how the proposed project satisfies the underlying local  
12 legal authority.

13 (4) If the lead agency identifies instances where questions on the  
14 checklist are adequately covered by a locally adopted ordinance,  
15 development regulation, land use plan, or other legal authority, an  
16 applicant may still provide answers to any questions on the checklist.

17 (5) Nothing in this section authorizes a lead agency to ignore or  
18 delete a question on the checklist.

19 (6) Nothing in this section changes the standard for whether an  
20 environmental impact statement is required for an action that may have  
21 a probable significant, adverse environmental impact pursuant to RCW  
22 43.21C.030.

23 (7) Nothing in this section affects the appeal provisions provided  
24 in this chapter.

25 (8) Nothing in this section modifies existing rules for determining  
26 the lead agency, as defined in WAC 197-11-922 through 197-11-948, nor  
27 does it modify agency procedures for complying with the state  
28 environmental policy act when an agency other than a local government  
29 is serving as the lead agency.

30 **Sec. 309.** RCW 36.70A.490 and 1995 c 347 s 115 are each amended to  
31 read as follows:

32 The growth management planning and environmental review fund is  
33 hereby established in the state treasury. Moneys may be placed in the  
34 fund from the proceeds of bond sales, tax revenues, budget transfers,  
35 federal appropriations, gifts, or any other lawful source. Moneys in  
36 the fund may be spent only after appropriation. Moneys in the fund  
37 shall be used to make grants or loans to local governments for the

1 purposes set forth in RCW 43.21C.240, 43.21C.031, or 36.70A.500. Any  
2 payment of either principal or interest, or both, derived from loans  
3 made from this fund must be deposited into the fund.

4 **Sec. 310.** RCW 36.70A.500 and 1997 c 429 s 28 are each amended to  
5 read as follows:

6 (1) The department of (~~community, — trade, — and — economic~~  
7 ~~development~~)) commerce shall provide management services for the growth  
8 management planning and environmental review fund created by RCW  
9 36.70A.490. The department shall establish procedures for fund  
10 management. The department shall encourage participation in the grant  
11 or loan program by other public agencies. The department shall develop  
12 the grant or loan criteria, monitor the grant or loan program, and  
13 select grant or loan recipients in consultation with state agencies  
14 participating in the grant or loan program through the provision of  
15 grant or loan funds or technical assistance.

16 (2) A grant or loan may be awarded to a county or city that is  
17 required to or has chosen to plan under RCW 36.70A.040 and that is  
18 qualified pursuant to this section. The grant or loan shall be  
19 provided to assist a county or city in paying for the cost of preparing  
20 an environmental analysis under chapter 43.21C RCW, that is integrated  
21 with a comprehensive plan, subarea plan, plan element, countywide  
22 planning policy, development regulation, monitoring program, or other  
23 planning activity adopted under or implementing this chapter that:

24 (a) Improves the process for project permit review while  
25 maintaining environmental quality; or

26 (b) Encourages use of plans and information developed for purposes  
27 of complying with this chapter to satisfy requirements of other state  
28 programs.

29 (3) In order to qualify for a grant or loan, a county or city  
30 shall:

31 (a) Demonstrate that it will prepare an environmental analysis  
32 pursuant to chapter 43.21C RCW and subsection (2) of this section that  
33 is integrated with a comprehensive plan, subarea plan, plan element,  
34 countywide planning policy, development regulations, monitoring  
35 program, or other planning activity adopted under or implementing this  
36 chapter;

1 (b) Address environmental impacts and consequences, alternatives,  
2 and mitigation measures in sufficient detail to allow the analysis to  
3 be adopted in whole or in part by applicants for development permits  
4 within the geographic area analyzed in the plan;

5 (c) Demonstrate that procedures for review of development permit  
6 applications will be based on the integrated plans and environmental  
7 analysis;

8 (d) Include mechanisms to monitor the consequences of growth as it  
9 occurs in the plan area and to use the resulting data to update the  
10 plan, policy, or implementing mechanisms and associated environmental  
11 analysis;

12 (e) Demonstrate substantial progress towards compliance with the  
13 requirements of this chapter. A county or city that is more than six  
14 months out of compliance with a requirement of this chapter is deemed  
15 not to be making substantial progress towards compliance; and

16 (f) Provide local funding, which may include financial  
17 participation by the private sector.

18 (4) In awarding grants or loans, the department shall give  
19 preference to proposals that include one or more of the following  
20 elements:

21 (a) Financial participation by the private sector, or a  
22 public/private partnering approach;

23 (b) Identification and monitoring of system capacities for elements  
24 of the built environment, and to the extent appropriate, of the natural  
25 environment;

26 (c) Coordination with state, federal, and tribal governments in  
27 project review;

28 (d) Furtherance of important state objectives related to economic  
29 development, protection of areas of statewide significance, and siting  
30 of essential public facilities;

31 (e) Programs to improve the efficiency and effectiveness of the  
32 permitting process by greater reliance on integrated plans and  
33 prospective environmental analysis;

34 (f) Programs for effective citizen and neighborhood involvement  
35 that contribute to greater likelihood that planning decisions can be  
36 implemented with community support; (~~and~~)

37 (g) Programs to identify environmental impacts and establish

1 mitigation measures that provide effective means to satisfy concurrency  
2 requirements and establish project consistency with the plans; or

3 (h) Environmental review that addresses the impacts of increased  
4 density or intensity of comprehensive plans, subarea plans, or  
5 receiving areas designated by a city or town under the regional  
6 transfer of development rights program in chapter 43.362 RCW.

7 (5) If the local funding includes funding provided by other state  
8 functional planning programs, including open space planning and  
9 watershed or basin planning, the functional plan shall be integrated  
10 into and be consistent with the comprehensive plan.

11 (6) State agencies shall work with grant or loan recipients to  
12 facilitate state and local project review processes that will implement  
13 the projects receiving grants or loans under this section.

14 **Sec. 311.** RCW 43.21C.110 and 1997 c 429 s 47 are each amended to  
15 read as follows:

16 It shall be the duty and function of the department of ecology:

17 (1) To adopt and amend (~~((thereafter))~~) rules of interpretation and  
18 implementation of this chapter, subject to the requirements of chapter  
19 34.05 RCW, for the purpose of providing uniform rules and guidelines to  
20 all branches of government including state agencies, political  
21 subdivisions, public and municipal corporations, and counties. The  
22 proposed rules shall be subject to full public hearings requirements  
23 associated with rule (~~((promulgation))~~) adoption. Suggestions for  
24 modifications of the proposed rules shall be considered on their  
25 merits, and the department shall have the authority and responsibility  
26 for full and appropriate independent (~~((promulgation-and))~~) adoption of  
27 rules, assuring consistency with this chapter as amended and with the  
28 preservation of protections afforded by this chapter. The rule-making  
29 powers authorized in this section shall include, but shall not be  
30 limited to, the following phases of interpretation and implementation  
31 of this chapter:

32 (a) Categories of governmental actions which are not to be  
33 considered as potential major actions significantly affecting the  
34 quality of the environment, including categories pertaining to  
35 applications for water right permits pursuant to chapters 90.03 and  
36 90.44 RCW. The types of actions included as categorical exemptions in  
37 the rules shall be limited to those types which are not major actions

1 significantly affecting the quality of the environment. The rules  
2 shall provide for certain circumstances where actions which potentially  
3 are categorically exempt require environmental review. An action that  
4 is categorically exempt under the rules adopted by the department may  
5 not be conditioned or denied under this chapter.

6 (b) Rules for criteria and procedures applicable to the  
7 determination of when an act of a branch of government is a major  
8 action significantly affecting the quality of the environment for which  
9 a detailed statement is required to be prepared pursuant to RCW  
10 43.21C.030.

11 (c) Rules and procedures applicable to the preparation of detailed  
12 statements and other environmental documents, including but not limited  
13 to rules for timing of environmental review, obtaining comments, data  
14 and other information, and providing for and determining areas of  
15 public participation which shall include the scope and review of draft  
16 environmental impact statements.

17 (d) Scope of coverage and contents of detailed statements assuring  
18 that such statements are simple, uniform, and as short as practicable;  
19 statements are required to analyze only reasonable alternatives and  
20 probable adverse environmental impacts which are significant, and may  
21 analyze beneficial impacts.

22 (e) Rules and procedures for public notification of actions taken  
23 and documents prepared.

24 (f) Definition of terms relevant to the implementation of this  
25 chapter including the establishment of a list of elements of the  
26 environment. Analysis of environmental considerations under RCW  
27 43.21C.030(2) may be required only for those subjects listed as  
28 elements of the environment (or portions thereof). The list of  
29 elements of the environment shall consist of the "natural" and "built"  
30 environment. The elements of the built environment shall consist of  
31 public services and utilities (such as water, sewer, schools, fire and  
32 police protection), transportation, environmental health (such as  
33 explosive materials and toxic waste), and land and shoreline use  
34 (including housing, and a description of the relationships with land  
35 use and shoreline plans and designations, including population).

36 (g) Rules for determining the obligations and powers under this  
37 chapter of two or more branches of government involved in the same  
38 project significantly affecting the quality of the environment.

1 (h) Methods to assure adequate public awareness of the preparation  
2 and issuance of detailed statements required by RCW 43.21C.030(2)(c).

3 (i) To prepare rules for projects setting forth the time limits  
4 within which the governmental entity responsible for the action shall  
5 comply with the provisions of this chapter.

6 (j) Rules for utilization of a detailed statement for more than one  
7 action and rules improving environmental analysis of nonproject  
8 proposals and encouraging better interagency coordination and  
9 integration between this chapter and other environmental laws.

10 (k) Rules relating to actions which shall be exempt from the  
11 provisions of this chapter in situations of emergency.

12 (l) Rules relating to the use of environmental documents in  
13 planning and decision making and the implementation of the substantive  
14 policies and requirements of this chapter, including procedures for  
15 appeals under this chapter.

16 (m) Rules and procedures that provide for the integration of  
17 environmental review with project review as provided in RCW 43.21C.240.  
18 The rules and procedures shall be jointly developed with the department  
19 of (~~community, trade, and economic development~~) commerce and shall be  
20 applicable to the preparation of environmental documents for actions in  
21 counties, cities, and towns planning under RCW 36.70A.040. The rules  
22 and procedures shall also include procedures and criteria to analyze  
23 planned actions under (~~RCW 43.21C.031(2)~~) section 303 of this act and  
24 revisions to the rules adopted under this section to ensure that they  
25 are compatible with the requirements and authorizations of chapter 347,  
26 Laws of 1995, as amended by chapter 429, Laws of 1997. Ordinances or  
27 procedures adopted by a county, city, or town to implement the  
28 provisions of chapter 347, Laws of 1995 prior to the effective date of  
29 rules adopted under this subsection (1)(m) shall continue to be  
30 effective until the adoption of any new or revised ordinances or  
31 procedures that may be required. If any revisions are required as a  
32 result of rules adopted under this subsection (1)(m), those revisions  
33 shall be made within the time limits specified in RCW 43.21C.120.

34 (2) In exercising its powers, functions, and duties under this  
35 section, the department may:

36 (a) Consult with the state agencies and with representatives of  
37 science, industry, agriculture, labor, conservation organizations,



1 state and local governments, and other groups, as it deems advisable;  
2 and  
3 (b) Utilize, to the fullest extent possible, the services,  
4 facilities, and information (including statistical information) of  
5 public and private agencies, organizations, and individuals, in order  
6 to avoid duplication of effort and expense, overlap, or conflict with  
7 similar activities authorized by law and performed by established  
8 agencies.

9 (3) Rules adopted pursuant to this section shall be subject to the  
10 review procedures of chapter 34.05 RCW.

11 **Sec. 312.** RCW 43.21C.095 and 1983 c 117 s 5 are each amended to  
12 read as follows:

13 The rules (~~(promulgated)~~) adopted under RCW 43.21C.110 shall be  
14 accorded substantial deference in the interpretation of this chapter.

Passed by the Senate April 10, 2012.

Passed by the House April 10, 2012.

Approved by the Governor May 2, 2012, with the exception  
of certain items that were vetoed.

Filed in Office of Secretary of State May 2, 2012.

**Note: Governor's explanation of partial veto is as follows:**

"I am returning herewith, without my approval as to Sections 305 and 306, Second Engrossed Substitute Senate Bill 6406 entitled:

"AN ACT Relating to modifying programs that provide for protection of the state's natural resources."

This bill streamlines regulatory programs for managing and protecting the state's natural environment while increasing the sustainability of program funding and maintaining current levels of natural resource protection.

Section 301 of the bill requires the Department of Ecology to prepare rules to update the categorical exemptions for environmental review under the State Environmental Policy Act (SEPA), revise the SEPA environmental checklist, and improve integration of SEPA with the provisions of the Growth Management Act. In updating the checklist, Section 301(2)(c) of the bill directs the Department of Ecology to "not include any new subjects into the scope of the checklist, including climate change and greenhouse gases."

I have been assured that the intent of this language is confined to its plain meaning: This subsection addresses only how the Department of Ecology may modify the environmental checklist in its update of WAC

197-11-960. This language does not impact in any way the scope of the environmental analysis required at the threshold determination stage

of the SEPA process or the scope of the environmental analysis required in an environmental impact statement. Letters I have received from legislators involved in the drafting of this language confirm that the Legislature's intent was to address only the scope of the environmental checklist and not to amend any substantive SEPA requirements.

This understanding and interpretation of the bill are set forth in letters to me from legislators directly involved in passage of the legislation, including an April 23, 2012, letter from Senator Sharon Nelson and Representative Dave Upthegrove, respective chairs of the Senate and House Environment Committees; an April 26, 2012, letter from Representatives Richard DeBolt, Joel Kretz, Bruce Chandler, Shelly Short, David Taylor, J.T. Wilcox, and Ed Orcutt; and an April 27, 2012, letter from Senators Jim Honeyford and Mark Schoesler.

This is also the understanding and interpretation set forth in an April 19, 2012, letter to me from Representative Joe Fitzgibbon, the prime sponsor of House Bill 2253, where this language first appeared.

I have also received letters from stakeholders who participated in legislative proceedings related to this provision. These stakeholders include the Association of Washington Cities, Washington State Association of Counties, Futurewise, Association of Washington Business, and the Washington Chapter of the American Planning Association. These letters affirm that the intent of Section 301 was to eliminate existing duplication between state natural resource programs, and not to amend any substantive SEPA requirements. An April 20, 2012, joint letter from representatives of four environmental organizations notes that ESSB 6406 was the product of "a long and ultimately constructive negotiation amongst a diverse set of stakeholders," including their organizations: People for Puget Sound, Washington Conservation Voters, the Washington Environmental Council, and Climate Solutions. This letter quotes the language of Section 301 (2)(c)(ii) and states: "Throughout the bill negotiations, there was agreement amongst all parties that the intent of this subsection was to ensure simply that no new line items were added to the SEPA checklist in the process of the checklist update directed by section 301." However, the letter indicates that after the passage of this bill by the Senate and House, advisers to these organizations raised concerns that the language could be read to make broader changes in SEPA law.

After careful review, I have concluded that these assurances that the Legislature did not intend to limit the scope of SEPA review of adverse effects of climate change and greenhouse gases are fully supported. Section 1 of the bill expresses the Legislature's intent to maintain current levels of natural resource protection. Additionally, Section 301(2)(c) specifically references the environmental checklist found in WAC 197-11-960. The Legislature did not reference other steps in the SEPA process such as the threshold determination addressed in different sections of chapter 197-11 WAC. Nothing in the letters I have received or in the legislative discussions of this provision negates this understanding.

My action in approving Section 301 is taken with the intent that it will operate only to prohibit inclusion of any new subjects in the scope of the checklist, and that the subjects of climate change

and greenhouse gases will be considered in the environmental analysis required at the threshold determination stage of the SEPA process and in the environmental analysis required in a SEPA environmental impact statement. After consulting legal advisers, it is my understanding that this is the proper reading of this section of the bill and that this understanding will be considered by the courts when ascertaining legislative intent, as outlined in *Lynch v. State*, 19 Wn.2d 802 (1944). Without this understanding, I would have vetoed Section 301.

Concern has also been raised that there is a need for a meaningful civil enforcement capacity to support the state's Hydraulic Project Approval (HPA) program. I share this concern and have asked the Washington Department of Fish and Wildlife to clarify the current enforcement mechanisms through rule revision within the ongoing HPA rule update, and to implement an effectiveness survey to measure results.

I am also asking the Department to deliver the survey results to the Office of Financial Management, the Governor's Office, and the Legislature, with the intent to inform actions needed to create a more effective civil enforcement HPA program.

Amendments to the bill in the final day of the 2012 1st Special Session removed the explicit authority for local governments to collect a fee to recover their costs for a SEPA environmental impact statement prepared in support of certain land use plans. However, remnants of the original fee proposal that are no longer meaningful were left in the bill. Section 305 allows local governments to recover the costs of a SEPA environmental impact statement for certain land use plans from either state funds or private donations. Local governments are already authorized to accept funding from these sources. Section 306 refers to fees that are no longer authorized in Section 305. These two sections of the bill have the potential to create confusion with the existing authorities of local governments.

For these reasons, I have vetoed Sections 305 and 306 of Second Engrossed Substitute Senate Bill 6406.

With the exception of Sections 305 and 306, Second Engrossed Substitute Senate Bill 6406 is approved."